

**VALENTI LAW APC**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAMIE TORRES,

Plaintiff,

vs.

MACDONALD AND ALBERT LP;  
PHILIP MACDONALD; and DOES 1-  
10,

Defendants.

Case No.:

COMPLAINT FOR:

DENIAL OF CIVIL RIGHTS AND  
ACCESS TO PUBLIC FACILITIES  
TO PHYSICALLY DISABLED  
PERSONS IN VIOLATION OF THE  
AMERICANS WITH DISABILITIES  
ACT OF 1990, (42 U.S.C. §12101, *et*  
*seq.*) AND THE UNRUH CIVIL  
RIGHTS ACT, (CALIFORNIA CIVIL  
CODE §51, *et seq.*)

DEMAND FOR JURY TRIAL

*“[T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.”* 42 U.S.C. §12101(a)(8).

*“It is the policy of this state to encourage and enable individuals with a disability to participate fully in the social and economic life of the state ...”*  
California Government Code §19230(a).

Plaintiff JAMIE TORRES (hereinafter referred to as “Plaintiff”) complains of MACDONALD AND ALBERT LP, a California limited partnership; PHILIP MACDONALD an individual dba BOB’S BIG BOY; and DOES 1-10, (each, individually a “Defendant” and collectively “Defendants”) and alleges as follows:

## I. PARTIES

1. Plaintiff JAMIE TORRES is a California resident and a qualified physically disabled person. She has Rheumatoid Arthritis and uses a wheelchair for mobility. Ms. Torres prides herself on her independence and on empowering other disabled people to be independent

2. Defendants MACDONALD AND ALBERT LP, PHILIP MACDONALD, and DOES 1-10 are and were the owners, operators, lessors and/or lessees of the subject business, property, and facility at all times relevant in this Complaint.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including DOES 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to

1 amend when the true names, capacities, connections, and responsibilities of the  
2 Defendants and Does 1 through 10, inclusive, are ascertained.

3 4. Defendants own and owned the property located at 4211 W Riverside  
4 Dr, Burbank, CA 91505 (“Subject Property”) at all relevant times.

5 5. Defendants operate and operated a restaurant doing business as  
6 BOB’S BIG BOY (“restaurant”), located at the Subject Property, at all relevant  
7 times.

8 6. Plaintiff alleges that the Defendants have been and are the owners,  
9 franchisees, lessees, general partners, limited partners, agents, trustees, employees,  
10 subsidiaries, partner companies and/or joint ventures of each of the other  
11 Defendants, and performed all acts and omissions stated herein within the course  
12 and scope of such relationships causing the damages complained of herein.

## 13 II. JURISDICTION AND VENUE

14 7. This Court has subject matter jurisdiction over this action pursuant to  
15 28 U.S.C. §1331 and §1343(a)(3) and (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, U.S.C. §12101, *et seq.*

17 8. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising out of the same nucleus of operative facts and arising out of the  
19 same transactions, is also brought under California’s Unruh Civil Rights Act,  
20 which expressly incorporates the Americans with Disabilities Act.

21 9. Venue is proper in this court pursuant to 28 U.S.C. U.S.C. §1391(b)  
22 and is founded on the fact that the real property which is the subject of this action  
23 is located in this district and that Plaintiff’s causes of action arose in this district.

## 24 III. FACTS

25 10. Plaintiff uses a wheelchair for mobility.

26 11. Defendants’ business is open to the public, a place of public  
27 accommodation, and a business establishment.  
28

12. Plaintiff went to the restaurant on May 8, 2024, and purchased food. The receipt she received for her purchase is shown in the photo below.



13. Unfortunately, during Plaintiff's visit, Defendants did not offer persons with disabilities equivalent facilities, privileges, advantages, and accommodations offered to other persons.

14. Plaintiff encountered numerous barriers that interfered with and denied Plaintiff the ability to use and enjoy the goods, services, privileges, advantages, and accommodations offered by Defendants at the Subject Property.

15. These barriers violate one or more standards of the Americans with Disabilities Act ("2010 ADA") and/or the California Building Codes ("2022 CBC").

1           16.   Parking for patrons visiting the Subject Property is among the  
2 facilities, privileges, advantages, and accommodations offered by Defendants.

3           17.   According to the U.S. Department of Justice, “a public  
4 accommodation’s first priority should be to enable individuals with disabilities to  
5 physically enter its facility. This priority on ‘getting through the door’ recognizes  
6 that providing physical access to a facility from public sidewalks, public  
7 transportation, or parking is generally preferable to any alternative arrangements in  
8 terms of both business efficiency and the dignity of individuals with disabilities.”  
9 ADA Title III Technical Assistance Manual §III-4.4500.

10          18.   When parking is provided, there must be at least one accessible  
11 parking space designated and marked for disabled persons. Where more than one  
12 parking facility is provided on a site, the number of accessible spaces provided on  
13 the site shall be calculated according to the number of spaces required for each  
14 parking facility. Parking spaces that serve a particular building or facility shall be  
15 located on the shortest accessible route from parking to an accessible entrance. Van  
16 accessible parking must be dispersed equally. 2010 ADA §502 *et seq.*; 2010 ADA  
17 §208.2; 2010 ADA §208.3.1; 2022 CBC 11B-502 *et seq.*; 2022 CBC 11B-208.2;  
18 2022 CBC 11B-208.3.1.

19          19.   However, there is not compliant accessible parking for disabled  
20 persons at the Subject Property because there are insufficient accessible parking  
21 spaces designated for disabled persons, the accessible parking spaces are not  
22 located on the shortest accessible route from parking to an accessible entrance,  
23 and/or the existing ostensibly designated space or spaces are significantly  
24 noncompliant with the applicable ADA and CBC standards.

25          20.   There is no van accessible parking located on the shortest accessible  
26 route from the parking to the restaurant’s accessible entrance. 2010 ADA §208.3.1;  
27 2022 CBC 11B-208.3.1.  
28

1           21. One of the two stalls marked as accessible in front of the restaurant  
2 entrance has an access aisle that is insufficiently wide, and the space has an  
3 insufficient length. 2010 ADA §502.3.1; 2022 CBC 11B-502.2.

4           22. The other stall marked as accessible in front of the restaurant entrance  
5 also has an insufficient length. 2022 CBC 11B-502.2. This stall also has a running  
6 slope of 2.4%. ADA §502.4; 2022 CBC 11B-502.4.

7           23. The space marked as van accessible has a running slope of 10.9% and  
8 a cross slope of 11.2%. ADA §502.4; 2022 CBC 11B-502.4. The ground surface of  
9 this space and its access aisle was severely cracked, broken and uneven.

10 Defendants have failed to maintain the parking lot. 2010 ADA §302; 2022 CBC  
11 11B-302; 28 C.F.R. §36.211(a); 2022 CBC 11B-108.

12           24. The site arrival points from both the public right of way and the  
13 parking lot do not connect to an accessible route to the accessible entrance of the  
14 restaurant. 2010 ADA §206.2.1; 2022 CBC 11B-206.2.1.

15           25. The restaurant's front and side doors require an excessive amount of  
16 pressure to open. 2022 CBC 11B-404.2.9.

17           26. There is an unsecured mat in the entrance area of the restaurant. 2010  
18 ADA §302.2; 2022 CBC 11B-302.2.

19           27. The route to both outside dining areas is inaccessible. The south  
20 outside dining area can only be accessed by stairs. The north outside dining area  
21 can only be accessed by going up a curb. 2010 ADA §206.4.1; 2022 CBC 11B-  
22 206.4.1.

23           28. Where dining surfaces are provided for the consumption of food and  
24 drink, at least 5% of those must be accessible. There must be minimum dimensions  
25 for the clearance under an accessible dining table so that the legs and toes of a  
26 person in a wheelchair can fit under the table. The north outside dining area has no  
27 tables with the required leg and toe space. 2010 ADA §226.1; 2010 ADA §306.2.3;  
28

1 2010 ADA §306.2.5; 2010 ADA §902; 2022 CBC 11B-226.1; 2022 CBC 11B-  
2 306.2.3; 2022 CBC 11B-306.2.5; 2022 CBC 11B-902.

3 29. Where restrooms are provided, each restroom must be accessible.  
4 2010 ADA §213.2; 2022 CBC 11B-213.2. Among other requirements, a restroom  
5 with toilet compartments must include at least one such compartment with  
6 sufficient width and maneuvering space for a wheelchair user to transfer to and  
7 from the toilet. 2010 ADA §604.3.1, §604.8; 2022 CBC 11B-604.3.1, 11B-604.8.

8 30. However, the women's restroom does not contain any toilet  
9 compartments that are wide enough to comply with the width and maneuvering  
10 requirements of the ADA and CBC. There is no toilet stall with sufficient clear  
11 floor space, width, and maneuvering space for a wheelchair user to transfer to and  
12 from the toilet. 2010 ADA §603.2.1, 2010 ADA §604.3.1, 2010 ADA §604.8.1.1,  
13 2010 ADA §604.8.1.2; CBC 11B-603.2.1, CBC 11B-604.3.1, CBC 11B-604.8.1.1,  
14 CBC 11B-604.8.1.2.

15 31. The changing table is positioned so that when it is deployed it  
16 prevents the stall door from opening. 2010 ADA §307.2; CBC 11B-307.2.

17 32. There is an unsecured, wet, and slippery mat under the sink. 2010  
18 ADA §302; CBC 11B-302.

19 33. The left grab bar is broken. The rear grab bar is not sufficient length.  
20 2010 ADA §604.5.1; 2010 ADA §604.5.1; CBC 11B-604.5.2; 28 C.F.R.  
21 §36.211(a); 2022 CBC 11B-108.

22 34. The photos below show one or more of these violations.

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1           35. The barriers existed during Plaintiff's visit to the Subject Property.  
2 Plaintiff personally encountered these barriers.

3           36. These inaccessible conditions and barriers denied Plaintiff full and  
4 equal access and caused her difficulty, discomfort, and embarrassment.

5           37. These barriers denied Plaintiff full and equal access due to her  
6 disability because, *inter alia*, they caused Plaintiff anxiety, difficulty, discomfort,  
7 and embarrassment which patrons who do not use a wheelchair for mobility do not  
8 suffer when they access the Subject Property.

9           38. Plaintiff intends to return to the Subject Property in the near future.  
10 Plaintiff is currently deterred from returning because of the knowledge of the  
11 barriers to equal access that relate to Plaintiff's disabilities which continue to exist  
12 at Defendants' public accommodation facilities.

13           39. Plaintiff alleges that Defendants knew that the barriers prevented  
14 equal access. Plaintiff further alleges that Defendants had actual or constructive  
15 knowledge that the architectural barriers prevented equal access, and that the  
16 noncompliance with the Americans with Disabilities Act and Title 24 of the  
17 California Building Code regarding accessible features was intentional.

18           40. Defendants have obstructed or failed to maintain, in working and  
19 useable conditions, those features necessary to provide ready access to persons  
20 with disabilities. "A public accommodation shall maintain in operable working  
21 condition those features of facilities and equipment that are required to be readily  
22 accessible to and usable by persons with disabilities." 28 C.F.R. §36.211(a); 2022  
23 CBC 11B-108.

24           41. The State of California Department of General Services, Division of  
25 the State Architect (DSA) provides commentary to 2022 CBC 11B-108 as follows:

26           Features for accessibility must be permanently functional, unobstructed  
27 and may not be removed. It is not sufficient to provide features such as  
28 accessible routes, parking, elevators, ramps or signage if those features

1 are not maintained in a manner that enables individuals with disabilities  
2 to use them.

3 DSA, 2019 California Access Compliance Advisory Reference Manual, p.84.

4 42. Defendants have the financial resources to remove these barriers  
5 without much expense or difficulty in order to make their property more accessible  
6 to their mobility impaired customers. The United States Department of Justice has  
7 identified that these types of barriers are readily achievable to remove.

8 43. To date, Defendants refuse to remove these barriers, in violation of  
9 the law, willfully depriving disabled persons including Plaintiff of important civil  
10 rights.

11 44. On information and belief, Plaintiff alleges that the Defendants'  
12 failure to remove these barriers was intentional because the barriers are logical and  
13 obvious. During all relevant times Defendants had authority, control, and dominion  
14 over these conditions and therefore the absence of accessible facilities was not a  
15 mishap, but rather an intentional act.

16 45. The barriers to access are listed above without prejudice to Plaintiff  
17 citing additional barriers to equal access by an amended complaint after inspection  
18 by Plaintiff's Certified Access Specialist (CAsp). *Oliver v. Ralphs Grocery Co.*,  
19 654 F.3d 903 (9th Cir. 2011); *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir.  
20 2008); *Chapman v. Pier One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir. 2011).  
21 All of these barriers to access render the premises inaccessible to physically  
22 disabled persons who are mobility impaired, such as Plaintiff, are barriers Plaintiff  
23 may encounter when she returns to the premises. All public accommodations must  
24 be brought into compliance with all applicable federal and state accessibility  
25 requirements.

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**FIRST CAUSE OF ACTION**

Violation of the Americans With Disabilities Act of 1990

(42 U.S.C. §12101, *et seq.*)

(Against All Defendants)

46. Plaintiff alleges and incorporates by reference, as if fully set forth again herein, each and every allegation contained in all prior paragraphs of this complaint.

47. More than thirty years ago, the 101st United States Congress found that although “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination...in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.” 42 U.S.C. §12101(a).

48. In 1990 Congress also found that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals,” but that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.” 42 U.S.C. §12101(a).

49. In passing the Americans with Disabilities Act of 1990, which was signed into law by President George H. W. Bush on July 26, 1990 (hereinafter the “ADA”), Congress stated as its purpose:

“It is the purpose of this Act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

1 (2) to provide clear, strong, consistent, enforceable standards  
2 addressing discrimination against individuals with disabilities;

3 (3) to ensure that the Federal Government plays a central role in  
4 enforcing the standards established in this Act on behalf of individuals  
5 with disabilities; and

6 (4) to invoke the sweep of congressional authority, including the power  
7 to enforce the fourteenth amendment and to regulate commerce, in  
8 order to address the major areas of discrimination faced day to-day by  
9 people with disabilities.”

9 42 USC §12101(b).

10 50. As part of the ADA, Congress passed “Title III – Public  
11 Accommodations and Services Operated by Private Entities” (42 U.S.C. §12181 *et*  
12 *seq.*). Title III of the ADA prohibits discrimination against any person “on the  
13 basis of disability in the full and equal enjoyment of the goods, services, facilities,  
14 privileges, advantages, or accommodations of any place of public accommodation  
15 by any person who owns, leases (or leases to), or operates a place of public  
16 accommodation.” 42 U.S.C. §12182(a).

17 51. The specific prohibitions against discrimination include, *inter alia*, the  
18 following:

- 19 • 42 U.S.C. §12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It  
20 shall be discriminatory to afford an individual or class of individuals,  
21 on the basis of a disability or disabilities of such individual or class,  
22 directly, or through contractual, licensing, or other arrangements, with  
23 the opportunity to participate in or benefit from a good, service, facility,  
24 privilege, advantage, or accommodation that is not equal to that  
25 afforded to other individuals.”
- 26 • 42 U.S.C. §12182(b)(2)(A)(ii): “a failure to make reasonable  
27 modifications in policies, practices, or procedures when such  
28 modifications are necessary to afford such goods, services, facilities,  
privileges, advantages, or accommodations to individuals with  
disabilities....;”

- 42 U.S.C. §12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied service, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services...;”
- 42 U.S.C. §12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities... where such removal is readily achievable;”
- 42 U.S.C. §12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.”

52. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation Act and in the Americans with Disabilities Act of 1990.

53. The acts and omissions of Defendants set forth herein were in violation of Plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36 *et seq.*

54. The removal of each of the physical and policy barriers complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards of §12181 and §12182 of the ADA. Removal of each and every one of the architectural and/or policy barriers complained of herein was already required under California law. Further, on information and belief, alterations, structural repairs or additions since January 26, 1993, have also independently triggered requirements for removal of barriers to access for disabled persons per §12183 of the ADA. In the event that removal of any barrier is found to be “not readily achievable,” Defendants still violated the ADA, per §12182(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and accommodations through alternative methods that were “readily achievable.”



1           55. On information and belief, as of the date of Plaintiff's encounter at the  
2 premises and as of the filing of this Complaint, Defendants' actions, policies, and  
3 physical premises have denied and continue to deny full and equal access to  
4 Plaintiff and to other mobility disabled persons in other respects, which violate  
5 Plaintiff's right to full and equal access and which discriminate against Plaintiff on  
6 the basis of her disabilities, thus wrongfully denying to Plaintiff the full and equal  
7 enjoyment of the goods, services, facilities, privileges, advantages and  
8 accommodations, in violation of 42 U.S.C. §12182 and §12183 of the ADA.

9           56. Defendants' actions continue to deny Plaintiff's rights to full and  
10 equal access and discriminated and continue to discriminate against her on the  
11 basis of her disabilities, thus wrongfully denying to Plaintiff the full and equal  
12 enjoyment of Defendants' goods, services, facilities, privileges, advantages and  
13 accommodations, in violation of the ADA, 42 U.S.C. §12182.

14           57. Further, each and every violation of the Americans With Disabilities  
15 Act of 1990 also constitutes a separate and distinct violation of California Civil  
16 Code §51(f), §52, §54(c) and §54.1(d), thus independently justifying an award of  
17 damages and injunctive relief pursuant to California law, including but not limited  
18 to Civil Code §54.3 and §55.

19                           **SECOND CAUSE OF ACTION**

20                           Violation of the Unruh Civil Rights Act

21                           (California Civil Code §51, *et seq.*)

22                           (Against All Defendants)

23           58. Plaintiff alleges and incorporates by reference, as if fully set forth  
24 again herein, each and every allegation contained in all prior paragraphs of this  
25 complaint.

26           59. California Civil Code §51 provides that physically disabled persons  
27 are free and equal citizens of the state, regardless of their medical condition or  
28 disability:

1 All persons within the jurisdiction of this state are free and equal, and  
2 no matter what their sex, race, color, religion, ancestry, national origin,  
3 **disability, or medical condition** are entitled to full and equal  
4 accommodations, advantages, facilities, privileges, or services in all  
business establishments of every kind whatsoever.

5 California Civil Code §51(b) (emphasis added).

6 60. California Civil Code §51.5 also states, in part: “No business,  
7 establishment of any kind whatsoever shall discriminate against...any person in  
8 this state on account” of their disability.

9 61. California Civil Code §51(f) specifically incorporates (by reference)  
10 an individual’s rights under the ADA into the Unruh Act.

11 62. California Civil Code §52 provides that the discrimination by  
12 Defendants against Plaintiff on the basis of her disability constitutes a violation of  
13 the general antidiscrimination provisions of §51 and §52.

14 63. Each of Defendants’ discriminatory acts or omissions constitutes a  
15 separate and distinct violation of California Civil Code §52, which provides that:

16 Whoever denies, aids or incites a denial, or makes any discrimination  
17 or distinction contrary to section 51, 51.5, or 51.6 is liable for each and  
18 every offense for the actual damages, and any amount that may be  
19 determined by a jury, or a court sitting without a jury, up to a maximum  
20 of three times the amount of actual damage but in no case less than four  
21 thousand dollars (\$4,000), and any attorney’s fees that may be  
determined by the court in addition thereto, suffered by any person  
denied the rights provided in Section 51, 51.5, or 51.6.

22 64. Any violation of the Americans with Disabilities Act of 1990  
23 constitutes a violation of California Civil Code §51(f), thus independently  
24 justifying an award of damages and injunctive relief pursuant to California law,  
25 including Civil Code §52. Per Civil Code §51(f), “A violation of the right of any  
26 individual under the Americans with Disabilities Act of 1990 (Public Law 101-  
27 336) shall also constitute a violation of this section.”  
28



1 by Plaintiff and similarly situated persons with disabilities, and which  
2 provide full and equal access, as required by law, and to maintain such  
3 accessible facilities once they are provided; to cease any discriminatory  
4 policies; and to train Defendants' employees and agents how to  
5 recognize disabled persons and accommodate their rights and needs;

6 2. Retain jurisdiction over the Defendants until such time as  
7 the Court is satisfied that Defendants' unlawful policies, practices, acts  
8 and omissions, and maintenance of physically inaccessible public  
9 facilities and policies as complained of herein no longer occur, and  
10 cannot recur;

11 3. Award to Plaintiff all appropriate damages, including but  
12 not limited to actual and statutory damages according to proof;

13 4. Award to Plaintiff all reasonable attorney fees, litigation  
14 expenses, and costs of this proceeding pursuant to 42 U.S.C §12205 and  
15 California Civil Code §52; and

16 5. Grant such other and further relief as this Court may deem  
17 just and proper.

18  
19 DATED: June 14, 2024

VALENTI LAW APC

20  
21 By: /s/ Matthew D. Valenti

22 Matthew D. Valenti  
23 Attorney for Plaintiff  
24 Jamie Torres  
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**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all claims and issues for which a jury is permitted.

DATED: June 14, 2024

**VALENTI LAW APC**

By: /s/ Matthew D. Valenti

Matthew D. Valenti  
Attorney for Plaintiff  
Jamie Torres